No. 1488.

Motion to advance.

Office Supreme Court U.S.
FILED
MAY 28 1902
JAMES H. McKENNEY,
Clerk.

Filed May 28, 1902.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

HENRY B. F. MACFARLAND ET AL.,
APPELLANTS,
vs.
EUGENE BYRNES ET AL.

MOTION TO ADVANCE.

IN THE

Supreme Court of the United States.

HENRY B. F. MACFARLAND ET AL.,
APPELLANTS,

vs.

EUGENE BYRNES ET AL.

MOTION TO ADVANCE.

The appeal in the above-entitled case is from a decree of the Court of Appeals of the District of Columbia, involving the construction of the act of Congress approved March 3, 1899, for the extension and widening of Sherman avenue, in the District of Columbia.

This act of Congress is in terms identical with the act for the extension of S, Twenty-second, and Decatur streets, which this Honorable Court reviewed in the case of Wight vs. Davidson et al., reversing the Court of Appeals, and while the question now sought to be reviewed in this case was not determined by this Honorable Court, the effect of the present decision of the Court of Appeals seriously interferes with the practical operation of said act of Congress, and unsettles all the proceedings taken for the extension of highways in the District of Columbia under the several acts of Congress for 1899, and the several hundred assessments for benefits made under said acts of Congress. These assess-

ments are part of the revenue of the District of Columbia; they involve several hundred thousands of dollars, and the action of the Court of Appeals has clouded the right of recovery, and thus materially interfered with the collection of said assessments. The case presents a question of great public importance, which ought to be determined at as early a day as this Honorable Court may find it convenient to hear the case.

In consideration of the premises, the appellants respectfully pray that the case may be advanced for hearing at the opening of the next term of this Honorable Court. All of which is respectfully submitted.

ANDREW B. DUVALL,
Attorney for Appellants.

I agree with the motion to advance.

(Signed) Leo Simmons,

~~Atouney~~ attorney for Appellees.

Office Supreme Court U.S.
FILED
NOV 4 1902
JAMES H. McKENNEY
Clerk

No. 332.

Brf. of Duvall, Thomas & O'Connor for Appellants.

Filed Nov. 4, 1902.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 332.

HENRY B. F. MACFARLAND ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

EUGENE BYRNES ET AL.

BRIEF AND ARGUMENT IN BEHALF OF APPELLANTS.

ANDREW B. DUVALL,
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Attorneys for Appellants.

(18,541.)

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(18,541.)

Supreme Court of the United States

OCTOBER TERM, 1902.

No. 332.

HENRY B. F. MACFARLAND ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APPELLANTS,

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BRIEF AND ARGUMENT IN BEHALF OF APPELLANTS.

STATEMENT OF FACTS.

By section 3 of the act of Congress entitled "An act to extend S street in the District of Columbia, and for other purposes," approved March 3, 1899, it was provided as follows:

"That within ninety days after the passage of this act the Commissioners of the District of Columbia are hereby authorized and directed to institute by a petition in the supreme court of the District of Columbia, sitting as a district court, a proceeding to condemn the land necessary for the extension of Eleventh street northwest on a straight extension of the lines thereof, as now established in the city of Washington, with a width of ninety

feet, from Florida avenue to Harvard street, and thence with the same width and in a straight line to Lydecker avenue, joining said avenue with its center line opposite the center line of Eslin avenue. That of the amount found due and awarded as damages for and in respect of the land condemned under this act for the extension of the said Eleventh street, at least one-half thereof shall be assessed by said jury in said proceedings against those pieces or parcels of ground abutting that portion of the street to be opened, and extended to a depth of two hundred feet from the building lines of said Eleventh street as extended."

Under this law a proceeding was instituted which resulted in a verdict by the jury, filed February 20, 1900, awarding as and for damages for the land taken the sum of $269,120 and assessing one-half thereof, viz., $134,560, upon the land abutting the street to be opened. After the filing of the verdict an order *nisi* was passed on the 19th day of March, 1900. In response thereto numerous exceptions and objections to the verdict were filed, and upon the hearing of the same before the trial court an order was passed on the 31st of July, 1900, confirming the awards and setting aside the assessments. From this decree the Commissioners of the District of Columbia appealed to the Court of Appeals, and while that court sustained the verdict of the jury as against the objections and exceptions made thereto, and reversed the judgment of the trial court in setting aside the assessments, it determined, following the case of Brown and Wallach *vs.* Macfarland *et al.*, decided upon the same day, that, although the owners of the land assessed for benefits had not asked for a trial by the second jury, they are now entitled to that right, and the case was remanded for such further proceedings as in the case might be just and right.

ARGUMENT.

The question of law involved in this case, to wit, whether the owners of land affected by the verdict in this case are entitled to a trial by a second jury, is the same in all respects as in the case of Macfarland *et al. vs.* Brown *et al.* (No. 331) upon the calendar of this court. The law and the facts are the same, except in this, that in this case none of the owners have, either by way of exception or objection to the verdict, nor by argument in the Court of Appeals, claimed the right to a second trial. They have elected to stand upon their exceptions, but, nevertheless, the Court of Appeals, in its opinion delivered in this case, held that, under the circumstances, these parties were induced to forego the right to a second jury, which that court decided that they were entitled to, and endeavors to restore to them such right.

We therefore respectfully refer the court, for the purpose of consideration with this case, to the brief upon this question filed by appellants in the case of Macfarland *et al. vs.* Brown *et al.* (No. 331).

ANDREW B. DUVALL.
E. H. THOMAS,
ARTHUR H. O'CONNOR,
Attorneys for Appellants.